Supreme Court, U.S.
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No. 02-

IN THE

Supreme Court of the United States

LOUIS I. MUND and COLUMBIA GOLF CLUB, INC.,

Petitioners,

v.

REBECCA BROWN, as Special Representative for Ruth S. Reeves, Deceased,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, FIFTH DISTRICT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Where Rebecca Brown in her capacity as Special Representative for Ruth S. Reeves deceased pursued the pleading of Counterclaims for Breach Of Contract, Ejectment, and a Civil Rights Action pursuant 42 U.S.C. § 1983 with Affirmative Defenses of Fraud, Statute of Frauds, and Avoidance of Contract in response to Louis Mund and the Columbia Golf Course's claims to Quiet Title under Illinois Law:

Did the St. Clair County, Illinois Circuit Court, the Appellate Court of Illinois, Fifth District, and the Illinois Supreme Court err when refusing to apply the proper Statute of Limitation for a Civil Rights Action under 42 U.S.C. Section 1983 and then allowing the application of Illinois State Law to dismiss all Counterclaims, strike all affirmative defenses, and enter Summary Judgment on the Quiet Title Claims?

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OPINIONS BELOW

The opinion of the Appellate Court of Illinois, Fifth District affirming the Circuit Court was entered on June 19, 2002. Under the Illinois Supreme Court Rules the opinion was entered as an unpublished Rule 23 Order, and is reprinted in the appendix to this petition. App. 1a-25a. The Appellate Court of Illinois, Fifth District denied a timely Petition for Rehearing with an Order entered August 7, 2002 which is reprinted in the appendix to this petition. App. 31a-32a The Illinois Supreme Court denied a timely filed Petition for Appeal as a Matter of Right or in the Alternative Petition for Leave to Appeal with an Order entered December 5, 2002 which is reprinted in the appendix attached to this petition. App. 33a. The Illinois Supreme Court denied a timely filed Motion for Leave to File Motion for Reconsideration with an Order entered January 16, 2003 which is reprinted in the appendix attached to this petition. App. 34a.

The decision of the Circuit Court entered on November 30, 2000 granted: (1) Summary Judgment to Louis Mund and his corporation Columbia Golf Club, Inc. on two Counts of Quiet Title claims; (2) the dismissal with prejudice of three Counterclaims filed on behalf of Ruth S. Reeves (now deceased) for Breach of Contract, Ejectment, and a 42 U.S.C. § 1983 Civil Rights Action; and (3) the striking of the affirmative defenses plead on behalf of Ruth S. Reeves. A copy of the Circuit Court decision is reprinted in the appendix attached to this petition. App. 26a-30a.

STATEMENT OF JURISDICTION

The Supreme Court of Illinois entered its order on December 5, 2002 denying a timely filed Petition for Appeal as a Matter of Right or in the Alternative Petition for Leave to Appeal. Correspondingly, the Illinois Supreme Court entered its Order denying a timely filed Motion for Leave to file Motion for Reconsideration on January 14, 2003.

This Court has Jurisdiction to review the Rule 23 Order of the Appellate Court of Illinois, Fifth District affirming the Judgment of the Circuit Court and correspondingly this Court has Jurisdiction to review the aforementioned Orders of the Illinois Supreme Court under 28 U.S.C. § 1257(a).

STATUTES INVOLVED

The statutory provision at issue is reprinted in the appendix to this petition. 42 U.S.C. § 1983 at App. 35a.

STATEMENT OF THE CASE

A. Nature of the Case

This case involves in part allegations pursuant to 42 U.S.C § 1983 for lack of payment on numerous properties and to respond to Quiet Title actions on acreage in St. Clair County, Illinois when it is contended there was never any good faith basis under Illinois Law for color of title. In essence a group of properties in Monroe County, Illinois and St. Clair County, Illinois were alleged to be taken by Louis Mund and an attorney named Michael Frierdich. Frierdich was the attorney for the family of George Reeves

who died in 1979. Frierdich represented the estate of George Reeves and his widow Ruth Reeves. The Estate of Ruth Reeves through personal representative Rebecca Brown contended that Frierdich has managed through Mund to complete, only within the last few months, the taking of the property at issue. This property at issue once belonged to Ruth Reeves in a land trust of several hundred acres (known as Land Trust 5048) and a Golf Course where Ruth S. Reeves was the sole shareholder in the Missouri Corporation that owned the Golf Course (known as GRR Investment Co. Inc. which was involuntarily dissolved by Frierdich in 1983). Ruth Reeves, who is the widow of George Reeves, died in July 2000 and her daughter Rebecca Brown became her Special Representative for the instant litigation.

Louis Mund claimed color of title for property known as Lot 7A in St. Clair County, Illinois pursuant to him in March 1982 supposedly entering into a land sale contract with GRR Investment Co. Inc. for the sum of $1,000,000 plus 12% interest for the purchase of the Columbia Golf Course located in St. Clair County and Monroe County, Illinois. It is contended that issues of fact exist as to whether the signature of Ruth Reeves was forged on the land sale contract for the golf course. It is contended that there is no proof the entire sum of $1,000,000 plus 12% interest was ever paid. In fact it was not paid in full. Further it contended that the only way this transaction could have ever transpired is that Frierdich without any authorization fabricated the sale of the golf course.

Louis Mund also claimed color of title for property known as Lot 7A in St. Clair County, Illinois pursuant to him supposedly entering into a land sale contract in April 1982 for the purchase of several hundred acres of property

known as Land Trust 5048 for the sum of $400,000 plus 8.75% to 9.275% interest. It is contended that issues of fact exist as to whether the signature of Ruth Reeves was forged. It is contended there is no proof that the entire sum of $400,000.00 plus 8.75% to 9.275% interest was paid. Further, it is contended the only way this transaction could have been arranged was through attorney Michael Frierdich who prepared the purported land sale contract.

On March 4, 1993 an attorney named Arthur Morris sent a letter to Ruth Reeves demanding that she execute a quitclaim deed for the parcel of property commonly known as Lot 7A. Morris claimed on behalf of Louis Mund that Lot 7A had been accidentally omitted from the purported land sale contracts for Land Trust 5048 and the Columbia Golf Course. The supposed omission of Lot 7A occurred even though the letter from Morris clearly states that Lot 7A was owned individually by Ruth Reeves. Morris was a law partner with Michael Frierdich during part of the time he represented Ruth Reeves in the 1980s and she lived in Boca Raton, Florida.

In February 2000 Louis Mund and his Corporation Columbia Golf Club, Inc. filed a Quiet Title Action for Lot 7A in the Circuit Court of St. Clair County, IL. Counterclaims were filed on behalf of Ruth Reeves for Breach of Land Sale Contracts, Ejectment, and a Civil Rights action under 42 U.S.C § 1983. Louis Mund filed a Supplemental Affidavit with attachments on November 20, 2000 in the Trial Court to supposedly establish payment for the Land Trust 5048 property and the Columbia Golf Course. This, according to Mund, would establish color of title obtained in good-faith to claim adverse possession under 735 ILCS 5/13-109 and 110. The Supplemental Affidavit and attachments

supposedly establish payment to GRR Investment Co. Inc. and also payment for a mortgage financed through an entity known as Germania Federal Savings and Loan. The Supplemental Affidavit and attachments also reference the First National Bank of Columbia and Northwestern Bank and Trust in regard to GRR Investment Co. Inc. Further, referenced are checks and a supposed closing statement. Yet, the Supplemental Affidavit and attachments do not show payment even remotely close to $1,000,000 plus 12% interest for the Columbia Golf Course. Also, the Supplemental Affidavit of Mund shows that no payment whatsoever was made for the Land Trust 5048 property which required payment of $400,000 plus 8.75% to 9.275% interest. Subsequent, to the filing of the Supplemental Affidavit by Louis Mund the Trial Court on November 30, 2000 granted Summary Judgment on two Quiet Title Claims for Mund and his Corporation, dismissed with prejudice the Counterclaims originally plead on behalf of Ruth Reeves and had stricken the affirmative defenses originally plead on behalf of Ruth Reeves. The four page decision by the Trial Court was authored by the attorney for Louis Mund and then adopted by the Trial Judge. App. 26a-30a.

PROCEDURAL HISTORY

In 1994 a lawsuit was filed against Michael Frierdich by Ruth Reeves which was later voluntarily dismissed in the United States District Court for the Southern District of Illinois. An attorney named Jack Strellis filed the lawsuit in 1994 without disclosing to Ruth Reeves that one of his law partners was also the former law partner of Michael Frierdich. A settlement agreement was set aside in the lawsuit and attorney Jack Strellis withdrew from representing Ruth Reeves. Voluntary dismissal of the lawsuit was granted in

November 1997 and then a RICO action was filed on behalf of Ruth Reeves, Rebecca Brown (daughter of Ruth Reeves) and Timothy Reeves (grandson of Ruth Reeves) in May 1998 in the United States District Court for the Southern District of Illinois against several Defendants including Michael Frierdich and Louis Mund. In part the RICO action (18 U.S.C. §§ 1962, *et seq.*) concerned the properties supposedly sold to Mund. The RICO action was dismissed pursuant to Statute of Limitations and affirmed by the Seventh Circuit Court of Appeals. A Petition for Writ of Certiorari was denied by this Honorable Court in regard to the RICO action.

Also, in May 1998 a lawsuit was filed against Ruth Reeves, Rebecca Brown, and Timothy Reeves by the Stumpf Family of Monroe County, Illinois through their Land Trust S & S Land Trust one of the Plaintiffs in the lawsuit. Alan Stumpf (one of Ruth Reeves' former attorneys) and Kenneth Stumpf were also Defendants in the 1998 RICO action. The state lawsuit with the Stumpfs also concerns properties that the Reeves' family asserts were unlawfully taken. Stumpfs are attempting to Quiet Title on the property involved in the state lawsuit. The state lawsuit is still pending with a related interlocutory appeal before the Appellate Court of Illinois, Fifth District.

In February 2000 Louis Mund and his Corporation filed to Quiet Title on property he already claimed to own in the previous RICO action which was dismissed pursuant to Statute of Limitations. Ruth Reeves died in July 2000 and her daughter Rebecca Brown was appointed her Special Representative. The Trial Court in November 2000 granted Summary Judgment for Mund and his Corporation, dismissed with prejudice the Counterclaims originally plead on behalf

of Ruth Reeves, and had stricken the affirmative defenses originally plead on behalf of Ruth Reeves. App. 26a-30a The decision of the Trial Court was affirmed by the Appellate Court of Illinois, Fifth District in June 2002. App. 1a-25a. A Petition for Rehearing was also denied by the Appellate Court of Illinois, Fifth District in August 2002. App. 31a-32a. The Supreme Court of Illinois then denied leave to Appeal on December 5, 2002 and denied leave to file a Motion for Reconsideration on January 21, 2003. App. 33a-34a The instant Petition for Writ of Certiorari has been timely filed pursuant to each Illinois State Court refusing to apply the correct Statute Limitation for a Civil Rights Action under 42 U.S.C. § 1983 and the erroneous application of nonfederal grounds.

REASONS FOR GRANTING THE WRIT

I.

IF NOT REVERSED BY THIS HONORABLE COURT THE ILLINOIS SUPREME COURT'S ORDERS, THE APPELLATE COURT OF ILLINOIS FIFTH DISTRICT RULE 23 ORDER, AND THE JUDGMENT ENTERED BY THE CIRCUIT COURT OF ST. CLAIR COUNTY, ILLINOIS WILL ALLOW AN ERRONEOUS INTERPRETATION OF THE STATUTE OF LIMITATION FOR A CIVIL RIGHTS ACTION UNDER 42 U.S.C. § 1983 TO STAND IN DIRECT CONTRADICTION WITH THE HOLDING IN *WILSON v. GARCIA*, 471 U.S. 261 (1985) AND ALSO ALLOW TO STAND ERRONEOUS ILLINOIS STATE LAW RULINGS WHICH PRECLUDE A VALID FEDERAL CAUSE OF ACTION.

A. Legal Standard

There is no dispute that the Statute of Limitation for a 1983 Civil Rights action is determined by the length of the Personal Injury Statute where the cause of action arose. *Wilson v. Garcia*, 471 U.S. 261 (1985). There is no dispute that the cause of action arose in the State Of Illinois where under 735 ILCS 5/13-202 the limitation period for a Personal Injury Action is two years. Louis Mund and his Corporation brought erroneous Quiet Title actions on February 10, 2000 and then on behalf of Ruth Reeves three Counterclaims including a 1983 Civil Rights action in July 2000 were filed. Normally, a State entity or its individual employees are sued in a Section 1983 action. However, private parties that invoke a defective statutory scheme can be found to be acting under

color of state law and denying a constitutional right. *Lugar v. Edmundson Oil Co.*, 457 U.S. 922, 941 (1982). Here, the requisite allegations were plead in Counterclaim III to state a cause of action Correspondingly, there is no bar to Counterclaim III based on the two year limitation period. Further, the granting of a Judgment pursuant to Illinois Common Law and Statutory Law should not have precluded litigation of the 42 U.S.C. § 1983 Civil Rights action. The adequacy of the state-law ground to support a judgment precluding litigation of the federal claim is itself a federal question subject to de novo review. *Howlett v. Rose*, 496 U.S. 356, 365 (1990).

B. Section 1983 Civil Rights Action in Counterclaim III

The Circuit Court of St. Clair County, Illinois adopted a Findings of Fact and Conclusions of Law that was drafted by the attorney for Louis Mund. App. 26a-30a. Specifically, the Trial Court found that the Counterclaim did not state a cause of action because there was no claim of malicious abuse in the facts alleged by Ruth Reeves. However, the Counterclaim plead by Ruth Reeves met the pleading standards for a 1983 action. Specifically, in Counterclaim III it was plead that Louis Mund by filing suit on or before February 10, 2000 with his corporation Columbia Golf Club Inc. became a private entity acting under the color of state law via the defective procedures of Statute [735 ILCS 5/2-103(b), Quiet Title Venue Statute]. Additionally, plead was the erroneously brought Quiet Title Actions were to unlawfully and unconstitutionally deny and deprive Ruth S. Reeves of her right to preserve her ownership over the Columbia Golf Course, Land Trust 5048 property and Lot 7A. Also, plead was that Mund and his corporation were joint participants with the St. Clair County Circuit Court

in proceeding under 735 ILCS 5/2-103(b) which through its administration was procedurally defective.

Further plead was the acts of Mund and the Columbia Golf Club Inc. were done intentionally to deprive Constitutional Rights of Ruth S. Reeves including the taking of property interests and liberty interests under the Fourteenth Amendment of the United States Constitution. The prerequisite to state a cause of action was more than met since this Honorable Court has held that there is a two step approach for a cause of action to be stated under a 1983 Civil Rights action. There must (1) be a deprivation of a right secured by the Constitution and laws of the United States and (2) the defendant must have acted under color of state law. *Lugar v. Edmundson Oil Company Inc.*, 457 U.S. 922, 930 (1982).

The St. Clair County Circuit Court's Findings of Fact and Conclusions of Law are erroneous when determining no cause of action was stated. App. 26a-30a. Also, the Majority of the Appellate Court of Illinois, Fifth District finding that Mund nor his corporation acted under color of state law contradicts United States Supreme Court precedent. App. 14a. In *Wyatt v. Cole*, 504 U.S. 158, 112 S. Ct. 1827 (1992) this Court held a private party filing a replevin suit and the party's attorney could be held liable without qualified immunity when a replevin statute and its administration were found unconstitutional. Private parties that invoke a defective statutory scheme can be found to be acting under color of state law and denying a constitutional right. *Lugar v. Edmundson Oil Co.*, 457 U.S. 922, 941 (1982). An erroneous Quiet Title Action is similar in design to an erroneous Replevin action in that pre-emptive strikes by litigation to promote the unlawful taking of property qualify as state

action. Mund and his corporation have engaged in enough corruption of judicial power as private litigants to be amenable to a 1983 action. *McCartney v. First City Bank*, 970 F.2d 45, 47 (5th Cir. 1992). Corruption of judicial power does not mean the Court is a willing participant, but that through defectively administered procedures Mund and his corporation have filed an action out of fraud. Fundamental Constitutional Rights under the Fourteenth Amendment were denied Ruth Reeves. Specifically, Mund filed a Supplemental Affidavit (as referenced in the Nature of the Case) which showed he didn't pay in full for the Columbia Golf Course and didn't pay at all for Land Trust 5048 property.

The Dissent of the Appellate Court of Illinois, Fifth District states the correct rules of law that apply to the 1983 action plead on behalf of Ruth Reeves. App. 22a-24a. First, the Dissent cites *Wilson v. Garcia*, 471 U.S. 261 (1985) for the correct Statute of Limitations which is two years pursuant to the personal injury statute of Illinois. There is no dispute that the Counterclaim was timely filed on July 20, 2000 in reaction to Mund and his corporation filing the erroneous Quiet Title actions on February 10, 2000. Also, the Dissent disagrees with the Circuit Court and the Majority of the Appellate Court that prior Federal decisions bar the pleading of the 1983 action. There is no case law that states the dismissal of a RICO action in 1999 prohibits the filing of a 1983 action in 2000 when the conduct of acting under color of State Law occurred in 2000. Further, the Dissent also points out that Mund never even filed a Motion to Dismiss based on failure to state a cause of action. App. 23a-24a. The erroneous rulings of the Circuit Court, the Majority of the Appellate Court, and the Orders of the Illinois Supreme Court refusing to hear the instant appeal are in direct contradiction with *Wilson v. Garcia*, 471 U.S.

261 (1985). App. 33a-34a. The math is simple the erroneous Quiet Title actions were filed in February 2000 and the corresponding Counterclaim pursuant to 42 U.S.C. § 1983 was filed in July 2000.

For the foregoing reasons the Petition for a Writ of Certiorari should be granted and upon taking the case the Judgment of the Circuit Court, the Rule 23 Order of the Appellate Court, and the Orders of the Illinois Supreme Court should all be reversed and/or vacated by this Honorable Court.

C. Application of the Supremacy Clause to the State Court Decisions

The St. Clair County Circuit Court precluded the 1983 action of Ruth Reeves in part because it felt that Louis Mund and his Corporation were entitled to Summary Judgment on their Quiet Title Claims under 735 ILCS 5/13-109 and 110 (2000) for Lot 7A. App. 26a-30a. These statutes authorize a claim of adverse possession if there is color of title gained in good faith and seven years of uninterrupted adverse possession occurs with payment of real estate taxes. The basis for color of title for Mund and his corporation was the supposed purchase of the Columbia Golf Course and properties known as Land Trust 5048. Yet, the documentation offered by Mund did not remotely show complete payment for these properties. In fact in March 1993 an attorney named Arthur Morris sent to Ruth Reeves a letter claiming that Lot 7A had been omitted from the sale of property to Louis Mund. The letter claimed that Mund had paid for the Land Trust 5048 property and correspondingly the Columbia Golf Course when in fact Mund did not pay in full for the Columbia Golf Course and paid nothing for Land Trust 5048

property. Also, the property is now being systematically conveyed to a family corporation of Michael Frierdich and his relatives. As referenced, in the Nature of the Case, Michael Frierdich was the attorney who handled the estate of George Reeves and then the affairs of his widow Ruth Reeves. All the properties at issue passed through the Estate of George Reeves and the affairs of Ruth Reeves when Frierdich was the attorney handling the transactions. This was done through Land Trusts where Ruth Reeves was the main beneficiary or through the Reeves' family corporation GRR Investment Co. Inc.

In *Wood v. Glos et al.*, 257 Ill. 125, 100 N.E. 516 (Ill. 1912) the Illinois Supreme Court held "the beginning of a suit terminates the running of the statute of limitations." The Majority of the Appellate Court affirmed the granting of Summary Judgment for Respondent's Quiet Title Claim when this case was not even found by the Majority. App. 12a-13a. In 1998 a Federal Lawsuit was indisputably filed by Ruth Reeves (now deceased), Rebecca Brown (Ruth's daughter), and Timothy Reeves (grandson of Ruth Reeves) requesting in part the return of disputed properties known as Lot 7A, the Columbia Golf Course, and Land Trust 5048 property. The Majority of the Appellate Court refused to follow the *Woods v. Glos* decision despite acknowledging the Federal Lawsuit was filed within the seven year period of adverse possession claimed by Louis Mund for Lot 7A. App. 12a-13a. A copy of the *Woods v. Glos* decision was included within the Record on Appeal before the Appellate Court. Also, the decision of the Appellate Court conflicts with *McConnell v. Jones et al.*, 332 Ill. 620, 623-624,

164 N.E. 186, 187-188 (Ill. 1928) where the Illinois Supreme Court held:

> The possession which is required by this statute is a seven year possession and the payment of taxes which is required is the payment during the seven years of all taxes legally assessed on the lands, but seven years must intervene between the time of first payment of taxes and the date of bringing of the suit.

The Majority of Appellate Court inferred facts that were not supported by the Record on Appeal. App. 13a-14a. Mund claimed adverse possession for periods of 1992-1998 with first payment of taxes for 1992 being made in June 1993 and the last payment for 1998 being made on August 30, 1999. Suit was filed by Respondent Mund in February 2000 which was clearly less than seven years from the first payment of taxes. Mund attached to his Second Amended Complaint tax receipts for the years 1990 and 1992-1998. Yet, no tax receipt was attached to show payment for 1991. The Majority of the Appellate Court acknowledged that there was no documentary proof that tax bills were sent for the period of June 1991 to June 1993, yet the Appellate Court inferred payment between June 1991 to June 1993 based on an affidavit of Louis Mund. The documentation in the Record on Appeal showed the seven year period for adverse possession started in June 1993, not June 1991 or June 1992. The decision of the Appellate Court did not follow Illinois Supreme Court precedent and affirmed the granting of summary judgment by the Circuit Court. App. 14a. The Illinois Supreme Court denied leave to appeal and any leave for reconsideration. App. 33a-34a.

These decisions and orders of the Illinois State Courts have precluded the pursuit of the Counterclaims filed by Ruth Reeves including the 1983 Federal Civil Rights action

Here, the Majority of the Appellate Court ignored Federal Precedent on Voluntary Dismissals where all proceedings are treated as a nullity and leave the parties as if the action had never been brought. *National R.R. Passenger Corp. v. JAMAW*, 915 F.2d 43, 48 (1st Cir. 1990). In November 1997 the United States District Court for the Southern District of Illinois granted voluntary dismissal to Ruth Reeves in a one count malpractice action brought against Michael Frierdich. Pursuant to the Federal Court granting the Voluntary Dismissal it was understood by the newly hired Counsel for Ruth Reeves that the Discovery in the case including the deposition of Ruth Reeves could not be used in a subsequent lawsuit. Further, the deposition was not taken as a whole in a light most favorable to Ruth Reeves which is required under Illinois Law when considering Summary Judgment. *In Re Estate Of Berry*, 277 Ill. App. 3d 1088, 1092, 661 N.E.2d 1150, 1153 (Ill. App. 5th Dist. 1996). The deposition was conducted by attorney Jack Strellis who was partners with Otto Faulbaum the former partner of Michael Frierdich. This was not disclosed to Ruth Reeves and Strellis eventually withdrew as Counsel when a questionable settlement agreement was set aside by the District Court. All of this is in the Record on Appeal and overlooked by the Majority of the Appellate Court. App. 10a-11a.

The reading of the Circuit Court decision precludes the 1983 action filed in Counterclaim III on behalf of Ruth Reeves because no claim for malicious abuse of process was plead. App 29a. Malicious Abuse of Process is a an Illinois State Tort claim. This is not required when pleading a 1983

Civil Rights action. This violates the Supremacy Clause of the Constitution since outright bad State law has been allowed to circumvent the prosecution of a Federal Cause of Action. Additionally, the Majority of the Appellate Court also determined that Mund and his corporation were not acting under color of state law. Yet, no Federal Standard as set out in *Lugar v. Edmundson Oil Co.*, 457 U.S. 922, 941 (1982) was followed by the Majority of the Appellate Court. App. 14a. Only erroneous Illinois Law was offered by the Appellate Court for not allowing the Federal Cause of Action to go forward. In *Howlett v. Rose*, 496 U.S. 356, 365 (1990) this Honorable Supreme Court held:

> Whether the constitutional rights asserted by petitioner were given due recognition by the [Court of Appeal] as a question as to which the [petitioner is] entitled to invoke our judgment, and this [he has] done in the appropriate way. It therefore is within our province to inquire not only whether the right was denied in express terms, but also whether it was denied in substance and effect, as by putting forward nonfederal grounds of decision that were without any fair or substantial support.

The Circuit Court appeared to dismiss with prejudice the three Counterclaims plead by Ruth Reeves. App. 26a-30a. These Counterclaims included Breach of Contract, Ejectment, and the 1983 Civil Rights action. Specifically, the Circuit Court found pursuant to 735 ILCS 5/2-619(a)(4) and (5) that a prior judgment in the RICO action by the Federal District Court in January 1999 and the affirming of the Judgment by the Seventh Circuit barred the Counterclaims brought against Mund and his Corporation.

However, Mund was the party that initiated the new litigation by filing an erroneous Quiet Title action on land he already claimed to own. The Circuit Court also had stricken the affirmative defenses plead on behalf of Ruth Reeves. Primarily, the Circuit Court by adopting the Findings of Fact and Conclusions of Law (drafted by Mund's attorney) dismissed the three Counterclaims and struck the affirmative defenses based on multiple statutes of limitations. App. 26a-30a. Many of these statute of limitations had no relevance at all to the actual causes of action and certainly had no relevance to the affirmative defenses. App. 26a-30a.

The Majority of the Appellate Court found the first Counterclaim for Breach of Contract to be time barred under 735 ILCS 5/13-206 which allows ten years for prosecution of a written contract. App. 16a-17a. However, under 735 ILCS 5/13-206 the limitation period of ten years starts to run anew when there is "other written evidence of indebtedness." The March 1993 letter from attorney Arthur Morris showed such indebtedness since the letter claimed Mund had paid his debt for the properties involved when in fact he did not. The Majority of the Appellate Court found the letter did not reaffirm the existence of a debt since it asserted all payments due had been made in an accelerated fashion. App. 16a. Yet, the Record on Appeal established Mund and his corporation did not pay in full for the Columbia Golf Course and paid nothing for Land Trust 5048 property. The letter from attorney Arthur Morris established a debt that was not paid Without the debt being paid there was no color of title gained in good faith to Quiet Title on Lot 7A. Correspondingly, the Majority of the Appellate Court affirmed the dismissal of the Ejectment Counterclaim because it felt Mund had lawful ownership and possession of the properties involved. App. 14a. However, as stated the Record

on Appeal established Mund and his corporation did not pay in full for the Columbia Golf Course and paid nothing for Land Trust 5048 property. The Majority of the Appellate affirmed the dismissal of Counterclaim III which plead deprivation of valid constitutional rights under 42 U.S.C § 1983. This was done as an afterthought with no in depth reasoning. App. 14a. Further, the Majority of the Appellate Court affirmed the striking of affirmative defenses because according to the Majority the affirmative defenses had no nexus to the lawsuit. App. 18a. In essence the Majority of the Appellate Court found the Counterclaims and the affirmative defenses to be time barred. This was done pursuant to many different reasons than originally entertained by the trial judge. App. 18a-19a.

The Dissent of the Appellate Court stated that under 735 ILCS 5/13-206 there existed genuine issues of fact as to the first Counterclaim. This is because the correct application of 735 ILCS 5/13-206 was applied by the Dissent. App. 21a-22a. There never was based on the Record on Appeal only one conclusion that could be drawn as to the running of the limitation period. Under Illinois Law unless the parties do not dispute the facts, or only one conclusion can be drawn a dismissal based on a Statute of Limitation is in error. This is because under the Discovery Rule which Illinois follows no dismissal is proper when issues of fact exist as to the running of the limitation period. *Vogt v. Bartelsmeyer*, 264 Ill. App. 3d 165, 173, 636 N.E.2d 1185, 1190-1191 (Ill. App. 5th Dist. 1994). Also, as stated there was a letter in March 1993 from attorney Arthur Morris which did reaffirm the transactions for the land. This in itself should have renewed the ten year limitation period under 735 ILCS 5/13-206. Correspondingly, with the first Counterclaim being valid under Illinois Law then the Second Counterclaim which plead Ejectment should

not have been dismissed. The Dissent of the Appellate Court correctly noted that a claim for Ejectment has a twenty year Statute of Limitations under 735 ILCS 5/13-101. App. 22a. Further, as the Dissent stated there were no allegations or evidence contained within the Record on Appeal that Mund or his corporation were in possession of the subject property for more than twenty years preceding the filing of the second Counterclaim. App. 22a. The Trial Court dismissal of the Ejectment action and the affirming of the dismissal by the Appellate Court were in error under Illinois Law. The dismissal of Counterclaims I and II was not justified under Illinois Law. Correspondingly, the dismissal of Counterclaim III should not have been affirmed since the Trial Court and the Majority of the Appellate Court reasoned that the dismissal of State claims justified the dismissal of the Federal Civil Rights action. Also, as stated previously the dismissal of the 1983 action in Counterclaim III pursuant to a Statute of Limitation was clearly in direct contradiction with *Wilson v. Garcia*, 471 U.S. 261 (1985). The Trial Court and the Majority of the Appellate Court also held that the affirmative defenses of Ruth Reeves were in part time-barred. The Dissent of the Appellate Court correctly noted there is no Statute of Limitation for an affirmative defense under Illinois Law. App. 24a. *See Westbank v. Maurer*, 276 Ill. App. 3d 553, 564, 658 N.E.2d 1381, 1390 (Ill. App. 2nd Dist. 1995).

The nonfederal grounds put forward for dismissal of the Counterclaims and the striking of the affirmative defenses were not justified pursuant to any fair and substantial support as required by this Honorable Court. *Howlett v. Rose*, 496 U.S. 356, 365 (1990). The dismissal of the State claims in Counterclaims I and II and the striking of the affirmative defenses was not supported under Illinois Law and should

not have been used to justify dismissal of the Federal Civil Rights action in Counterclaim III. *Howlett v. Rose*, 496 U.S. 356, 365 (1990).

Here, in the instant case, the Illinois Supreme Court by denying the Petition for Appeal as a Matter of Right or in the Alternative Petition for Leave to Appeal on December 5, 2002 and then leave to file a Motion for Reconsideration only endorsed the erroneous rulings of the Circuit Court and the Appellate Court. App. 33a-34a. Specifically, Illinois Supreme Court Rule 317 grants an Appeal as a Matter of Right when lower Illinois Courts via their decisions deny constitutional rights. This is a case of an attorney named Michael Frierdich using Mund to now take control over the Columbia Golf Course, Land Trust 5048 property, and Lot 7A. The Courts of Illinois and the United States should not be used to assist an attorney named Michael Frierdich through third parties such as Mund and his corporation to take the property of his former client Ruth Reeves (now deceased). For the foregoing reasons the Petition for a Writ of Certiorari should be granted and upon taking the case the Judgment of the Circuit Court, the Rule 23 Order of the Appellate Court, and the Orders of the Illinois Supreme Court should all be reversed and/or vacated by this Honorable Court.

CONCLUSION

Unequivocally, the State Law decisions of the Circuit Court of St. Clair County, Illinois, the Appellate Court of Illinois, Fifth District, and the Illinois Supreme Court if allowed to stand will circumvent the pursuit of a Federal Cause of Action under 42 U.S.C § 1983 and corresponding Constitutional Rights. The Statute of Limitations for a Federal Cause of Action under 42 U.S.C. § 1983 should not be misapplied and erroneous State Law should not be permitted to preclude superior Federal Law. For the foregoing reasons the Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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APPENDIX A — RULE 23 ORDER OF THE APPELLATE COURT OF ILLINOIS FOR THE FIFTH DISTRICT DATED AND FILED JUNE 19, 2002

NO. 5-00-0841

IN THE
APPELLATE COURT OF ILLINOIS
FIFTH DISTRICT

LOUIS I. MUND and COLUMBIA GOLF CLUB, INC.,

Plaintiffs-Appellees,

v.

REBECCA BROWN, as Special Representative for Ruth S. Reeves, Deceased,

Defendant-Appellant.

Appeal from the Circuit Court of St. Clair County.

No. 00-CH-95

Honorable John M. Goodwin, Jr., Judge, presiding.

RULE 23 ORDER

This case presents a simple question: Who holds rightful title to a piece of real estate known as Lot 7A?

Rebecca Brown, special representative for Ruth Reeves, now deceased, appeals from the grant of a summary judgment

in favor of Louis Mund in an action to quiet title under sections 13-109 and 13-110 of the Illinois Code of Civil Procedure (Code) (735 ILCS 5/13-109, 13-110 (West 1998)). Brown wants us to overturn a trial judge's determination that Mund is the legal owner of Lot 7A.

The piece of property in question was a part of a 1982 real estate transaction that became the source of protracted, and somewhat delphic, federal litigation, launched in the early nineties by Ruth Reeves against the appellees. Reeves lost the case prior to her demise. Many of the "facts" that Brown now pleads and asserts as reasons for a genuine factual dispute formed the basis of the federal court pleadings that were litigated years ago. Those "facts" are resurrected here as counterclaims and affirmative defenses.

Brown's counterclaims and affirmative defenses obscure the simple issue that confronted the trial judge and resulted in some lower court findings superfluous to the quiet title action. Those findings needlessly complicate the arguments raised on appeal and are unnecessary to a review of the holding that Mund became the legal owner of Lot 7A pursuant to his payment of taxes with color of title. The question that we decide in this case is whether reasonable minds could differ over the material facts legitimately at issue in the quiet title suit. More specifically, we must determine whether reasonable minds could differ over these facts: Did Louis Mund and Columbia Golf Club, Inc., actually possess Lot 7A for over seven successive years? If so, was that actual possession under a claim and color of title made in good faith? Finally, during that time of actual possession, did Mund and the corporation pay all the taxes

legally assessed on Lot 7A? If reasonable minds would not differ when assessing these facts, a summary judgment in favor of the appellees was properly rendered and the legal owner of Lot 7A was properly determined.

As simple, and plainly beyond dispute, as these facts may seem to be, Brown insists that they need to be litigated and decided by a jury. We think it instructive to set forth verbatim the points that Brown raises to support a reversal and a remand for a jury trial over the ownership of Lot 7A. The points we are asked to address stray far beyond what was placed at issue by the filing of the action to quiet title. The following are the points, absent cited authorities, that Brown considers germane to the question of who is the legal owner of Lot 7A:

> "I. The circuit court erred under de novo review when granting summary judgment in favor of plaintiffs on counts I and II of plaintiffs' second amended complaint when material issues of fact existed as to the running of a seven[-]year period under [sections 13-109 and 13-110 of the Code]
>
> a. Standards for summary judgment
>
> * * *
>
> b. Interruption of seven[-]year period with federal lawsuit filed in 1998
>
> * * *

c. Seven years hadn't run from when plaintiffs first paid taxes and when plaintiffs filed suit

* * *

d. Color of title not gained in good faith

* * *

e. Admissions and denials in Ruth Reeve's [*sic*] answer should not have been construed against her

* * *

f. Deposition testimony of Ruth S. Reeves in cause 94-1000-PER did not constitute binding judicial admissions

* * *

g. Limitation period of counterclaims affecting summary judgment

* * *

h. Unreasonable to conclude Ruth Reeves would not wait from 1982 to 1993 to know something was happening with the Columbia Golf Course

* * *

Appendix A

i. Trial court erroneously found that it was unreasonable to conclude that Ruth S. Reeves would not know about a note on which G.R.R. [Investment Company, Inc.] was obligated

* * *

j. Trial court erroneously found that exhibits 8 and 9 attached to Timothy Reeves' affidavit [*sic*] did not preclude summary judgment

* * *

k. The court failed to strike the affidavit of Louis I. Mund

* * *

l. Trial court failed to consider controverted facts

* * *

II. The trial court erred when it dismissed with prejudice defendant's counterclaims and had stricken defendant's affirmative defenses

a. The court erroneously entered summary judgment on counts I and II of plaintiffs' second amended complaint and also erroneously dismissed defendant's counterclaims when clear issues of material fact existed

* * *

b. The trial court erroneously found that prior decisions barred the counterclaims

* * *

c. [Section 13-206 of the Code (735 ILCS 5/13-206 (West 1998))] is the proper limitation period for written contracts and the court incorrectly found the limitation period had run

* * *

d. [Section 13-206 of the Code] is the proper limitation period for written contracts and the statute could not have run if the seventh circuit decision does provide the date of notice

* * *

e. [Sections 13-102, 13-207, and 13-205 of the Code (735 ILCS 5/13-102, 13-207, 13-205 (West 1998))] are not applicable statutes of limitation to the instant lawsuit

* * *

f. Summary judgment and correspondingly [*sic*] dismissal under [section 2-619 of the Code (735 ILCS 2-619 (West 1998))] should not have been granted since plaintiffs did not adequately plead their causes of action and affirmative defenses

* * *

g. Proposed findings of fact and conclusions of law filed by plaintiffs should have been stricken

* * *

h. The trial court failed to reference the counterclaims [for] breach of contract and ejectment in its findings of fact and conclusions of law and the denial of live witnesses also affected the ruling on the [section] 2-619 dismissals"

Brown sets forth the following questions in that portion of the brief that calls for "Issues Presented for Review":

"1. Did the Trial Court err in granting Summary Judgment on Plaintiffs-Appellees' Quiet Title Claims when:

a. All the pleadings, admissions, affidavits, and depositions were not strictly construed against the Plaintiffs?

b. There was an interruption of the seven[-]year period for adverse possession by a Federal Lawsuit?

c. Seven years hadn't run from the time real estate taxes were paid by the Plaintiffs?

d. Color of Title was not gained in good faith?

e. Admissions and denials weren't construed in Ruth S. Reeves' favor?

f. Deposition testimony of Ruth S. Reeves from Federal Cause 94-1000-PER was used against her, despite Federal Cause 94-1000-PER being Voluntarily Dismissed and issues of fact resulting from her testimony?

g. Counterclaims were dismissed based On Statutes Of Limitations and correspondingly Summary Judgment was granted on Plaintiffs' Quiet Title actions for adverse possession?

h. It was concluded that Ruth S. Reeves should have known something about the Columbia Golf Course in 1982?

i. It found it was unreasonable for Ruth S. Reeves not to know about a Note on [which] G.R.R. Investment Inc. Co. [*sic*] was obligated?

j. It found Exhibits 8 and 9 attached to Timothy Reeves' affidavit not to be relevant?

k. It failed to strike the affidavit of Louis I. Mund?

l. It failed to consider controvertred [*sic*] material facts[]?

2. Did the Trial Court err in dismissing with prejudice the Defendant-Appellant's three Counterclaims and striking the Defendant-Appellant's Affirmative Defenses when:

Appendix A

a. Summary Judgment was entered on Counts I and II of Plaintiffs' Second Amended Complaint and Defendant's Counterclaims were dismissed, despite issues of material fact?

b. It found Counterclaims were barred by previous decisions?

c. It found the Limitation Period under [section 13-206 of the Code] had expired?

d. It found [section 13-206] had expired pursuant to the Seventh Circuit providing a Date of Notice?

e. Multiple Statutes of Limitations were applied?

f. Plaintiffs did not adequately plead any Causes of Action and [*sic*] any Affirmative Defenses?

g. Plaintiffs' proposed Findings Of Fact And Conclusions Of Law weren't stricken?

h. It failed to reference certain Counterclaims and denied live witnesses[']testimony?"

As complicated and factually contested as Brown's multifaceted arguments may seem to make this case, the core facts of the quiet title action were simply irrefutable to the sound and reasonable mind. We can start with actual possession, for it was virtually uncontested. Mund and Columbia Golf Club, Inc., have possessed Lot 7A since 1982.

Appendix A

Brown asserts that a genuine issue of material fact exists over whether Mund and Columbia Golf Club, Inc., possessed Lot 7A under a claim and color of title made in good faith. The basis of this assertion is set forth in a lengthy and very detailed set of affirmative defenses and counterclaims, the gist of which allege that Lot 7A, along with other property obtained from Ruth Reeves, was possessed unlawfully through fraud, forgery, and deceit. We believe that the only *reasonable* conclusion to draw from the evidence submitted in support of the summary judgment motion is that Mund purchased Lot 7A, along with other property surrounding it, in 1982. Loan and mortgage documents, together with a closing statement evidencing the transfer of purchase price monies to the seller, defy any other reasonable factual conclusion.

While Brown seems to think that the voluntary dismissal of a lawsuit in which sworn deposition testimony has been given relieves the deponent of sworn answers, we think it fair to recognize that Ruth Reeves admitted, under oath, prior to her death, that Lot 7A was sold in 1983 and that she signed the document of sale.[1] Moreover, after the dates on the closing

1. We choose to address Brown's argument regarding Reeves' federal court deposition testimony by way of this footnote because it instructs on the difficulty that we have had, and we suspect the trial judge had, with some of the rather novel propositions Brown tenders for decision. Brown argues that because Reeves voluntarily dismissed the federal lawsuit that led to her sworn deposition testimony, the sworn deposition testimony should be treated as a nullity — *i.e.*, as if it never happened. This proposition is supported by citation to authority that has prevented the use of *res judicata* or collateral estoppel based upon a voluntary dismissal.

(Cont'd)

documents, Mund and Columbia Golf Club, Inc., treated the property like it was their own, and at the same time, Ruth Reeves treated the property like someone who had sold it, rather than someone who owned it. Their respective approaches to the property lasted for well over a decade before Ruth Reeves filed her federal lawsuit.

Mund's affidavit claims that Mund paid the property taxes on Lot 7A since its asserted purchase in 1982. Mund presented the tax bills made out to him and Columbia Golf Club, Inc., to support his claim for the years 1990, 1992, 1993, 1994, 1995, 1996, 1997, and 1998. Neither Ruth Reeves

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(Cont'd)

Ergo, we are told that the trial judge should have completely ignored the sworn testimony by Ms. Reeves that she sold Lot 7A and signed the sale document.

While litigants cannot use a voluntary dismissal to foreclose the future litigation of legal issues, the voluntary dismissal of a lawsuit cannot be said to rewrite history or to erase admissions made under penalty of perjury. We know of no law that provides such relief to party deponents caught in damning admissions harmful to their lawsuits. We are not prepared to provide for such an escape hatch by the acceptance of Brown's argument.

We note, in passing, that Brown does not want us to treat Ruth Reeves' deposition testimony as if it never existed. Brown wants us to consider it a nullity only as to the damning admission her deceased made under oath. In the same argument in which we are asked to treat the deposition testimony as a nullity, Brown argues extensively about facts established during Ruth Reeves' sworn deposition testimony. Brown assails the trial judge for failing to consider "the crux of the deposition."

nor her special representative nor anyone acting for them has ever produced documentation that a tax bill for Lot 7A was ever sent to Reeves during this time frame. No one has ever claimed that anyone other than Mund paid the taxes assessed on this parcel for the seven successive years evidenced by the tax bills.

Brown raises several arguments, none of which alter the virtually undisputed fact that Mund paid all the taxes legally assessed on Lot 7A for seven successive years and then some. First, she asserts that Ruth Reeves' federal lawsuit, filed in 1998, interrupted any continuous period of adverse possession. This proposition is based upon a citation to a case that does not exist, at least not in the book or at the page to which Brown directs us. Nevertheless, Reeves' *unsuccessful* lawsuit, barred by the statute of limitations, did nothing to interrupt Mund's actual possession of Lot 7A, and we are not prepared to hold that the filing of a spurious lawsuit, lacking in merit, will toll, or interrupt, the possession called for in order to become the legal owner by the payment of taxes under color of title. Even if there is a case that stands for the proposition that continuous adverse possession can be broken by someone merely filing a lawsuit that contests ownership, regardless of the lawsuit's merit, which is what Brown seems to contend, we decline to follow it. We hold that the filing of a lawsuit that is clearly out of time will not work to toll the length of the possession necessary to employ this particular statutory means of quieting title. Any other conclusion would render the statute meaningless, for anyone with a foreclosed claim to title could break possession's successive chain by filing a suit that asserted an ancient and

stale claim, with no basis for recovery. Thereafter, they could file a suit to quiet title that asserted the prior spurious suit's interruption of continuous adverse possession.

Next, Brown argues that Mund filed the suit to quiet title prematurely, months before seven years had passed after his first payment of taxes on Lot 7A. This argument draws upon the presence of a 1990 tax bill attached to Mund's affidavit and the absence of a 1991 tax bill. Brown concludes from the gap in tax bill documentation that "the tax bills show no taxes were paid from June 14, 1991[,] to June 25, 1993." In fact, the missing tax bill cannot tell us anything about whether taxes were paid or not paid during this time period in 1991, 1992, and 1993. While it is true that no one tendered the 1991 tax bill for Lot 7A, and thus there was no documentary proof of where the bills were sent and whether they were paid between June of 1991 and June of 1993, Mund maintained under oath that he paid the taxes for that period of time, as well as all of the other documented years. We can easily, and reasonably, infer from the later bills that someone clearly paid the taxes for this period of time. It is also reasonable to infer that the person who was in actual possession and enjoying Lot 7A's use at the time, and who had paid all the taxes before and after that time, was indeed the taxpayer, as claimed. We note that Brown does not claim that Ruth Reeves paid the taxes during the questioned time period. All that Brown claims is that Reeves "also paid some taxes." In support of this claim, Brown attached an exhibit to the affidavit of Timothy Reeves that establishes the payment of property taxes on another parcel of property.

Under the circumstances presented, we think it decidedly reasonable for the trial judge to conclude that reasonable minds would not differ and that no genuine issue of fact existed about whether Mund paid the taxes for seven years prior to filing the quiet title suit.

Brown raised several counterclaims in her answer to the quiet title suit. A review of those counterclaims reveals that none of them raise a genuine issue of material fact about the ultimate issue at hand — whether Mund became the legal owner of Lot 7A by virtue of his payment of real estate taxes on the parcel. The first counterclaim tries to resurrect a time-barred cause of action for breach of contract. The second counterclaim sounds in ejectment, which rests upon the existence of a fact that facts underlying Mund's cause of action belie. We have already concluded that there are no facts giving rise to a genuine dispute over Mund's legal ownership by virtue of the payment of taxes under color of title. Therefore, the unlawful possession necessary to maintain an action for ejectment does not exist. The third counterclaim tries to assert a civil rights action pursuant to section 1983 of the Civil Rights Act of 1871 (42 U.S.C. § 1983 (1994)), alleging that filing a quiet title action amounts to an act under color of state law. Neither Mund nor his corporation acted under color of state law for the purpose of a section 1983 civil rights action, by filing a quiet title lawsuit in a state court. The counterclaim fails to state a civil rights cause of action on its face.

We address the questions raised in the first counterclaim in more detail. Brown seeks to raise a cause of action for breach of contract. She alleges that Mund breached a 1982

contract for the sale of land, a contract for the sale of much more property than just Lot 7A. The breach is alleged as Mund's failure to pay $1.4 million for all of the property, including the parcel known as Lot 7A. While Lot 7A, the subject matter of this quiet title action, was a part of the contract, the counterclaim is not confined to damage sustained by an alleged failure to comply with the promise to purchase it. In a simple action to quiet title to this parcel, Brown counters by claiming a breach of contract that requests far more than the damages that resulted from an alleged failure to pay for Lot 7A. Brown wants a judgment for compensatory damages in excess of $50,000, preliminary injunctive relief for possession of all of the land conveyed under the contract, and the return of the property known as Land Trust 5048, the Columbia Golf Course, and Lot 7A. She asks for this relief only if Mund and Columbia Golf Club, Inc., cannot pay in full the current fair market value of all of the land still possessed and all of the monies received from any sale of those lands. While a counterclaim over the sale of Lot 7A might arise out of this quiet title action, clearly the counterclaim, as alleged, far exceeds the kind of bearing that a claim countering an original complaint must have to the issues raised in that complaint. The trial judge properly dismissed the counterclaim for breach of contract.

We note that Brown, in asserting this counterclaim, seeks relief that could only be granted if Ruth Reeves and Mund had, in fact, entered into a valid contract for the sale of Lot 7A. Thus, the counterclaim is consistent with Mund's claim that Lot 7A was lawfully acquired through a contract for the sale of land. However, it is totally at odds with

Brown's claims that the contract never existed and that the instrument that set forth its terms bears the forged signature of Ruth Reeves.

Even if we were of a mind to allow Brown to obtain relief under the terms of a written instrument that Brown excoriates as nothing more than a bogus fraud, the fact remains that an action for breach of contract under the instrument's terms became time-barred years ago.

Brown addresses the stale and aged nature of the claim by arguing that the statute of limitations was tolled under the discovery rule. See *Golla v. General Motors Corp.*, 167 Ill. 2d 353, 360-61, 657 N.E.2d 894, 898 (1995). She maintains that a question of fact exists as to when Reeves first became aware, or should have become aware, of a contract breach. She relies upon a March 4, 1993, letter requesting a deed on Lot 7A as a "reaffirmation of the debt" and, hence, the date when the statute of limitations commenced running. The letter did not reaffirm the existence of a debt. To the contrary, it asserted that all payments due had been made in accelerated fashion, and it requested the conveyance of the title to Lot 7A.

Again, we are confronted with whether there is a *genuine* issue of fact as to when Ruth Reeves should have become aware of nonpayment under the contract. In other pleadings, we are told that Ruth Reeves did not sign the document of sale and did not receive anything of value from Mund. A review of the alleged written contract reveals payment terms that required interest payments to commence on September 1, 1982. Two $200,000 principal payments were to be made on

or before September 1, 1987, and September 1, 1989. The alleged breach is for the nonpayment of principal and interest amounts.

If Reeves did not receive interest payments on September 1, 1982, she should have been aware on September 2, 1982, that Mund had breached the payment terms of the land sale contract. Every day thereafter that further interest payments were not forthcoming was another day upon which a breach occurred. The continuing failure to pay for the conveyed land was something the seller should have discovered long before March of 1993. When Reeves did not receive a $200,000 principal payment on September 1, 1987, she should have been aware of that fact. She should have become aware of another breach of contract on September 2, 1989, if, as she has alleged, Mund never tendered money for any of the property in question under the contract. A bare assertion that Reeves remained ignorant of Mund's failure to comply with the contract's payment terms until March of 1993 is not a reasonable assertion. It fails to present a genuine factual dispute over which reasonable minds could differ.

Finally, Brown raised several affirmative defenses, none of which had any bearing on this action to quiet title by virtue of possession coupled with seven successive years of real estate tax payment. The gist of every affirmative defense finds reason in an assertion that Mund never lawfully owned or possessed Lot 7A by virtue of a legitimate land sale purchase. Even if that assertion was true, despite documentation that strongly suggests otherwise, Mund was not asserting the

original land sale purchase as his basis for being declared the lawful owner of Lot 7A.

Brown raises the affirmative defenses of "Fraud," "Statute of Frauds," and "Avoidance of Contract." The allegations under the "Statute of Frauds" affirmative defense will suffice to demonstrate the lack of nexus to this lawsuit. Brown alleges:

> "Plaintiffs-Counterdefendants have no enforceable contract for the Columbia Golf Course, Land Trust 5048, and Lot 7A since any contracts (See Exhibits 2 and 6) have the name of Ruth S. Reeves forged, and as such there is no viable signature of the party to be charged."

We are left to wonder what this has to do with a claim to title under the statutory provision that provides for ownership rights by virtue of real estate tax payments over seven successive years. We reiterate that the facts were virtually undisputable that Mund and the corporation were in actual possession, under claim and color of title, made in good faith, while they paid the taxes on Lot 7A for seven successive years. Whether or not Mund and Columbia Golf Club, Inc., had an enforceable contract for Lot 7A or not, they subsequently did what was necessary to be declared the legal owner of Lot 7A.

For the foregoing reasons, we affirm the rulings of the court below. We are fully aware of the fact that the reasons we affirm the summary judgment in favor of Mund and Columbia Golf Club, Inc., differ in many respects from the

reasons the trial judge stated for the results that he reached. However, because our review is *de novo*, we may affirm the trial court's judgment based upon any reasons apparent from the record before us on appeal. *Estate of Johnson v. Condell Memorial Hospital*, 119 Ill. 2d 496, 502, 520 N.E.2d 37, 39 (1988).

Affirmed.

KUEHN, J., with GOLDENHERSH, J., concurring.

WELCH, J., dissenting:

I take issue with the majority's following statement:

> "[Defendant's] counterclaims and affirmative defenses obscure the simple issue that confronted the trial judge and resulted in some lower court findings superfluous to the quiet title action. Those findings needlessly complicate the arguments raised on appeal and are unnecessary to a review of the holding that Mund became the legal owner of Lot 7A pursuant to his payment of taxes with color of title." Order at 2.

Defendant's counterclaims and affirmative defenses are part and parcel of the issues confronting the trial judge, for if Mund acquired possession of Lot 7A through fraud or forgery, he did not acquire color of title *in good faith* as required by sections 13-109 and 13-110 of the Code of Civil Procedure (Code) (735 ILCS 5/13-109, 13-110 (West 2000)).

Appendix A

Defendant's counterclaims and affirmative defenses raise genuine issues of material fact as to whether Mund acquired color of title in good faith.

In the face of these counterclaims and affirmative defenses, a summary judgment in favor of Mund is not appropriate. Defendant argues on appeal that the trial court erred in dismissing her counterclaims and striking her affirmative defenses. The majority finds that these arguments "needlessly complicate" the appeal and are "unnecessary to a review of the holding that Mund became the legal owner of Lot 7A pursuant to his payment of taxes with color of title." Order at 2. I disagree.

I dissent because I believe that when the record on appeal is honestly and completely reviewed, it is apparent that the trial court erred in dismissing defendant's counterclaims and striking her affirmative defenses. Accordingly, a summary judgment in favor of Mund was not appropriate because genuine issues of material fact exist as to whether Mund acquired color of title in good faith.

The standard of review on appeal from the dismissal of a complaint pursuant to section 2-619 of the Code (735 ILCS 5/2-619 (West 2000)) is the same as that on an appeal from a summary judgment: whether the existence of a genuine issue of material fact should have precluded the dismissal or summary judgment or, absent such an issue of fact, whether the dismissal or judgment is proper as a matter of law. *Kedzie & 103rd Currency Exchange, Inc. v. Hodge*, 156 Ill. 2d 112, 116-17 (1993). In either case, we review the trial court's decision *de novo*. *Hodge*, 156 Ill. 2d at 116. It is not our job

to *decide* disputed questions of fact, but only to determine whether they exist. If disputed questions of fact do exist, then a dismissal or summary judgment is inappropriate. In my view, the majority goes one step too far, deciding the disputed questions of fact raised by defendant's counterclaims and affirmative defenses. I would reverse the trial court's order of November 30, 2000, because I believe that genuine issues of material fact exist with respect to the issues in this case and that plaintiffs were not entitled to a dismissal, or a judgment in their favor, as a matter of law.

I turn first to the dismissal of defendant's counterclaims as having been filed after the expiration of the applicable statutes of limitations. With respect to count I, alleging breach of written contract, the statute of limitations for actions on written contracts is set forth in section 13-206 of the Code: all actions on written contracts must be commenced within 10 years next after the cause of action accrued. 735 ILCS 5/13-206 (West 2000). I believe that a genuine issue of fact exists as to when defendant's cause of action for breach of contract accrued. Illinois follows the "discovery rule" in determining when a period of limitation begins to run. *Vogt v. Bargelsmeyer*, 264 Ill. App. 3d 165, 173 (1994). The effect of the discovery rule is to postpone the starting of the period of limitations until the injured party knows or should have known of his injury. *Vogt*, 264 Ill. App. 3d at 173. Under the discovery rule, determining the point at which the running of the limitations period begins is a question for the trier of fact, unless the parties do not dispute the facts or only one conclusion can be drawn. *Vogt*, 264 Ill. App. 3d at 173. In the instant case, a question of fact exists

as to when defendant first became aware, or should have been aware, of her injury as a result of plaintiffs' breach of contract.

With respect to count II of defendant's counterclaim, seeking ejectment, the trial court clearly erred in dismissing on the basis of the statute of limitations. The statute of limitations applicable to actions in ejectment is found in section 13-101 of the Code (735 ILCS 5/13-101 (West 2000)). A claim for ejectment has a 20-year statute of limitations that begins to run when the property owner becomes aware of the entry by another onto his property. *Rosenthal v. City of Crystal Lake*, 171 Ill. App. 3d 428, 439-41 (1988); 735 ILCS 5/13-101 (West 2000). The record contains no allegation or evidence that plaintiffs were in possession of the subject property for more than 20 years preceding the filing of Reeves' counterclaim for ejectment. Plaintiffs were not entitled to the dismissal of count II of defendant's counterclaim on the basis of the expiration of the statute of limitations.

Finally, with respect to count III of defendant's counterclaim, alleging a violation of her civil rights under the Civil Rights Act of 1871 (42 U.S.C. § 1983 (1994)) by virtue of plaintiffs' filing the instant quiet title action, the parties agree that a two-year statute of limitations period applies. See *Wilson v. Garcia*, 471 U.S. 261, 85 L. Ed. 2d 254, 105 S. Ct. 1938 (1985). Because defendant's claim arose out of the commencement of the instant action on February 10, 2000, her counterclaim, filed July 20, 2000, was timely filed and plaintiffs were not entitled to the dismissal of this claim as a matter of law based on the statute of limitations.

The trial court also found that defendant's claims were barred by the prior decisions of the federal courts, which determined that defendant had knowledge of her claims in 1993 and they were therefore barred by the applicable statutes of limitations. The reasoning of the trial court is unclear. Nevertheless, I would reverse the dismissal of defendant's counterclaim on this ground because, even if defendant did know of her claims against plaintiffs in 1993, they would not be barred by the applicable statutes of limitations.

In its order of November 30, 2000, the trial court also found that count III, alleging a section 1983 civil rights violation, failed to state a cause of action because it failed to allege malicious abuse of process by plaintiffs. Plaintiffs' motion to dismiss was brought pursuant to section 2-619 of the Code, not section 2-615 of the Code (735 ILCS 5/2-619, 2-615 (West 2000)). Plaintiffs' motion to dismiss count III of defendant's counterclaim was based solely on the statute of limitations and did not allege or argue that it failed to state a cause of action. The trial court errs in granting a motion that has not been made. See *Crooks Terminal Warehouse, Inc. v. American National Bank & Trust Co. of Chicago*, 83 Ill. App. 3d 693, 698 (1980). To do so deprives the other party of the opportunity to defeat the motion or, in this case, to amend its pleadings to state a cause of action. See also *Tyler Enterprises of Elwood v. Skiver*, 260 Ill. App. 3d 742, 753-54 (1994). To the extent this was the basis for the trial court's dismissal of count III of defendant's counterclaim, I would reverse it.

In my opinion, plaintiffs were not entitled to the dismissal of defendant's counterclaims as a matter of law. A genuine

question of fact exists as to the timeliness of the filing of count I of the counterclaim. Neither count II nor count III were filed outside the applicable statute of limitations period. The dismissal of count III for the failure to state a cause of action was premature. Accordingly, I would reverse the dismissal of counts I through III of defendant's counterclaim against plaintiffs.

I turn now to the trial court's striking of defendant's affirmative defenses to plaintiffs' complaint. The trial court apparently struck the affirmative defenses for the same reasons its dismissed defendant's counterclaim: because they were filed beyond the applicable statute of limitations and were barred by the rulings of the federal courts as to defendant's date of discovery of her injury. The trial court erred as a matter of law. In *Westbank v. Maurer*, 276 Ill. App. 3d 553, 564 (1995), this court held that there is a well-recognized distinction between the maintenance of an original action (a counterclaim) and the assertion of a defense in response to an action filed by another (an affirmative defense). The assertion of an affirmative defense against an action brought against a defendant is not barred by the statute of limitations. *Westbank*, 276 Ill. App. 3d at 564. Accordingly, I would reverse the trial court's order striking defendant's affirmative defenses as having been filed beyond the expiration of the statute of limitations.

Finally, I turn to the summary judgment entered in favor of plaintiffs on their second amended complaint to quiet title. Because I believe that the trial court erred in dismissing and striking defendant's counterclaims and affirmative defenses, I also believe that there are genuine issues of material fact

that exist with respect to plaintiffs' claims, particularly whether their claim and color of title to Lot 7A was made in good faith. In her counterclaims and affirmative defenses, defendant alleges that Reeves' signature on the contract to buy and sell Lot 7A was obtained through fraud, as a part of a fraudulent scheme, and that plaintiffs never paid the monies due thereunder or under the collateral contract to purchase the golf course. The good faith in the creation or acquisition of color of title required by section 13-109 of the Code (adverse possession under color of title upon the payment of taxes) is a freedom from the design to defraud the person having the better title. *In re Estate of Tobin*, 176 Ill. App. 3d 580, 588 (1988). Defendant has raised a genuine issue of material fact as to whether plaintiffs' "color of title" was acquired in good faith. Accordingly, I would reverse the summary judgment entered in favor of plaintiffs on their second amended complaint.

This case is admittedly convoluted, confusing, and complicated. Defendant's pleadings are not well drafted and are difficult to follow. The case has a tortured procedural history. I can therefore understand the desire of the trial court and, apparently, the majority to dispose of this case as expeditiously as possible. Nevertheless, I believe that the trial court erred as a matter of law in dismissing and striking defendant's counterclaims and affirmative defenses and that these counterclaims and affirmative defenses raise genuine issues of material fact as to whether plaintiffs acquired color of title to Lot 7A in good faith. Accordingly, I would reverse and remand this cause for further proceedings on the pleadings.

APPENDIX B — FINDINGS OF FACT AND CONCLUSIONS OF LAW OF THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT FOR ST. CLAIR COUNTY, ILLINOIS DATED AND FILED NOVEMBER 30, 2000

IN THE CIRCUIT COURT OF
THE TWENTIETH JUDICIAL CIRCUIT
ST. CLAIR COUNTY, ILLINOIS

No.: 00-CH-95

LOUIS I. MUND and COLUMBIA GOLF CLUB, INC.,

Plaintiffs,

vs.

RUTH REEVES,

Defendant.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This cause coming on to be heard this __ day of _____, 2000, on the Combined Motion to Dismiss and for Summary Judgment filed by the plaintiffs herein, and the Court having reviewed the pleadings of the parties and having listened to arguments of counsel and considered their arguments and memorandums submitted, finds as follows:

1. That on or about August 31, 1998, RUTH REEVES (inter alia) (hereinafter referred to as REEVES) filed her Amended Complaint in the United States District Court for

the Southern District of Illinois, 98-384-PER, which, in Counts IV, V and VI made certain allegations relative to the COLUMBIA GOLF CLUB of which Lot 7A is the subject matter of plaintiffs' Second Amended Complaint. A copy of the *Reeves* Amended Complaint was attached to the combined motion as Exhibit A.

2. That on January 11, 1999, the Honorable David Herndon, United States District Judge, entered judgment against REEVES (inter alia) and in favor of LOUIS I. MUND hereinafter referred to as MUND) (inter alia), a copy of the judgments and Amended Memorandum and Order being attached to the combined motion to dismiss as Exhibit B.

3. That thereafter, on January 4, 2000, the United States Court of Appeals for the Seventh Circuit affirmed the decision of Judge Herndon, by an opinion, a copy of which was attached to the combined motion as Exhibit C.

4. That on June 5, 2000 the United States Supreme Court denied REEVES' Petition for Writ of Certiorari, a copy of the denial of which was attached to the combined motion as Exhibit D.

5. That the plaintiffs in the instant action filed their Amended Complaint seeking title to Lot 7A by virtue of 735 ILCS 5/13-109 and 110 by the payment of real estate taxes through the calendar year 1998, the tax bill for which was paid when due on August 30, 1999.

6. That by virtue of said allegations, the plaintiffs' cause of action arose on August 30, 1999.

Appendix B

7. That in her Answer, the defendant REEVES admits that the plaintiffs herein have paid taxes for more than seven years, admits that the plaintiffs are in actual possession of the land, admits that demand was made on her to convey the land (which she refused), and further admits that the instant plaintiffs have no adequate remedy at law.

8. That the statements of REEVES in her deposition in Cause 94-1000-PER are judicial admissions.

9. That it is unreasonable to conclude that MRS. REEVES would wait from 1982 to 1993 and not know that something was happening with the golf course and the land that had been hers.

10. That it is unreasonable to conclude that MRS. REEVES would not know that a note on which G.R.R. Investment Company, Inc. was obligated was paid as per the checks included in Group Exhibits A and B attached to the Supplemental Affidavit of LOUIS I. MUND.

11. That Exhibit 8 attached to the defendant Timothy Reeves' Affidavit is irrelevant to the claims in the Second Amended Complaint inasmuch as the complaint had never been filed.

12. That Exhibit 9 attached to the Affidavit of Timothy Reeves is a tax bill not on Lot 7A but on Lot 4.

13. That reasonable men could not differ on the facts as set forth in the Affidavit of LOUIS I. MUND and the Supplemental Affidavit of LOUIS I. MUND as well as the

facts hereinabove set forth. Therefore, it is hereby the order of the court as follows:

1. That summary judgment on the plaintiffs' Second Amended Complaint to Quiet Title is hereby entered in favor of the plaintiffs and against the defendant in Counts I and II.

2. That the Counterclaim does not state a cause of action under § 1983, the filing of a lawsuit absent a claim of malicious abuse of process (not present under the facts as alleged) is not proper, the plaintiffs exercising a proper right they have under 735 ILCS 5/13-109 and 110.

3. That the prior decision in the United States District Court determined that REEVES had knowledge of the claims as of February 17, 1993 while the Seventh Circuit found the correct date of knowledge was March 4, 1993. Therefore the counterclaim and affirmative defenses are barred by these prior decisions under 735 ILCS 5/2-619(a)(4) and (5) in that:

a) 735 ILCS 5/13-206 establishes a 10-year statute of limitations on written contracts, and the contracts in question were entered in 1982, the statute therefore running in 1992;

b) 735 ILCS 5/13-102 establishes a 7-year statute for breach of conditions subsequent and if REEVES is claiming this section the statute would have run in 1989;

c) 735 ILCS 5/13-1005 provides a 5-year statute for actions "not otherwise provided," which would have run on either February 17, 1998 or March 4, 1998;

d) 42 USC § 1983 by case law provides a 2-year statute which would have run on either February 17, 1995 or March 4, 1995.

That in any event because the plaintiffs did not "own" their cause of action until August 30, 1999, the Counterclaim and Affirmative Defenses are barred because the statutes of limitations hereinabove enumerated barred the Counterclaim and Affirmative Defenses prior to the formation of the bases of the claims in the primary complaint pursuant to 735 ILCS 5/13-207.

4. That the Counterclaim is herein dismissed and the Affirmative Defenses herein ordered stricken.

s/ John M. Goodwin
Associate Circuit Judge

APPENDIX C — ORDER OF THE APPELLATE COURT OF ILLINOIS FOR THE FIFTH DISTRICT DENYING PETITION FOR REHEARING DATED AND FILED AUGUST 7, 2002

NO. 5-00-0841

IN THE
APPELLATE COURT OF ILLINOIS
FIFTH DISTRICT

LOUIS I. MUND and COLUMBIA GOLF CLUB, INC.,

Plaintiffs-Appellees,

v.

REBECCA BROWN, in her capacity as Special Representative for Ruth S. Reeves, Deceased,

Defendant-Appellant.

Appeal from the Circuit Court of St. Clair County.

No. 00-CH-95

ORDER

This cause coming to be heard on appellant's petition for rehearing, appellant's motion by interlineation, appellant's motion to take judicial notice, appellees' objection thereto, appellees' motion to impose sanctions, appellant's response thereto, and the court being advised in the premises:

Appendix C

IT IS THEREFORE ORDERED that appellant's motion by interlineation shall be and hereby is, GRANTED. Appellant's motion to take judicial notice is hereby DENIED. Appellant's petition for rehearing is hereby DENIED. Appellees' motion to impose sanctions is hereby DENIED.

APPENDIX D — ORDER OF THE SUPREME COURT OF ILLINOIS DENYING PETITION FOR LEAVE TO APPEAL DATED DECEMBER 5, 2002

SUPREME COURT OF ILLINOIS
CLERK OF THE COURT
SUPREME COURT BUILDING
SPRINGFIELD, ILLINOIS 62701
(217) 782-2035

94704

December 5, 2002

Mr. Paul Douglas Brown
Annamalai & Brown
11 The Pines Court, Ste. E
Creve Coeur, MO 63141

No. 94704 — Louis I. Mund et al., respondents, v. Rebecca Brown, etc., petitioner. Leave to appeal, Appellate Court, Fifth District.

The Supreme Court today DENIED the petition for leave to appeal or appeal as a matter of right in the above entitled cause.

The mandate of this Court will issue to the Appellate Court on December 27, 2002.

APPENDIX E — ORDER OF THE SUPREME COURT OF ILLINOIS DENYING MOTION FOR LEAVE TO FILE MOTION FOR RECONSIDERATION DATED JANUARY 16, 2003

SUPREME COURT OF ILLINOIS
SUPREME COURT BUILDING
SPRINGFIELD 62701

January 16, 2003

Mr. Paul Douglas Brown
Annamalai & Brown
11 The Pines Court, Ste. E
Creve Coeur, MO 63141

TODAY THE FOLLOWING ORDER WAS ENTERED:

No. 94704 — Louis I. Mund et al., respondents, v. Rebecca Brown, etc., petitioner.

Motion by petitioner for leave to file a motion for reconsideration of the order denying petition for leave to appeal or to appeal as of right. Motion *denied.*

Order entered by the Court.

Mandate has issued forthwith to the Appellate Court, Fifth District.

APPENDIX F — STATUTE INVOLVED

42 U.S.C. SECTION 1983

Sec. 1983. - Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia